

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 137 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

2 to 5: No

COMMISSIONER OF INCOME TAX

Versus

ANNAPURNA FIBRES PVT. LTD.

Appearance:

MR MANISH R BHATT for Petitioner
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 18/08/98

ORAL JUDGEMENT (per R.K. Abichandani, J.)

The petitioner has suggested the following questions for calling for the statement of the case from the Income Tax Appellate Tribunal under Sec. 256(2) of the Income-tax Act, 1961.

"1. Whether the Appellate Tribunal has correctly appreciated the facts on record so as to direct the Assessing Officer to allow the alleged commission payments in toto?

2. Whether the Appellate Tribunal ought not to have appreciated that these alleged payments were nothing but diversion of profits for which there was no agreement?

3. Whether the Appellate Tribunal in the facts and circumstances of the case ought not to have appreciated that the transactions were nothing but a ruse or a subterfuge so as to divert the profits?"

2. An application under sec. 256(1) of the Act was made before the Tribunal for referring the aforesaid questions for the opinion of the court and the Tribunal, by its order dated 26th September 1997, rejected the same on the ground that its decision was based on findings of fact to the effect that the commission agents had rendered services for which the payments were made under a written agreement.

3. The learned counsel appearing for the petitioner contended that the Tribunal has not taken into account the relevant fact which weighed with the CIT (Appeals) who upheld the disallowance. It was argued that the CIT (Appeals) had considered the fact that there was no staff, no office, no telephone facility etc. in order to show that commission work was being attended to.

4. The record established that there was a written agreement between the assessee company and the commission agent by which the commission agent was responsible for recovering payment from the customers of the assessee company. Under the said agreement, it was the duty of the commission agent to procure business of the assessee from the party only after verifying the creditworthiness of the customers. Referring to the written agreement, the Tribunal found that both the commission agents recovered not only the sale proceeds but also interest due from the parties. They had confirmed this fact in their statements. It was also proved that the commission agents looked into the creditworthiness of the parties effectively. The Tribunal held from the record that the Department did not prove that payments made by the assessee to the commission agents were in excess of the payments which would be receivable for such services by

other parties in the market. It also held that the Department failed to prove that the provisions of Sec. 40A(2) of the Act were attracted to the facts of the case. The genuineness of the written agreement was never in dispute. Payments were made in the past and such amounts were allowed. The Tribunal, therefore, did not find any fresh compelling facts for not allowing the amount during the year in question. According to us, the finding of the Tribunal that the payment as claimed by the assessee was, in fact, made for the services rendered by the commission agents, is a finding of fact which is based on the material on record. The Tribunal did consider the grounds which had weighed with the appellate authority including the ground that there was no infrastructure for rendering services of commission agents. Therefore, it cannot be said that the finding of the Tribunal is perverse on the ground that material evidence has been omitted from its consideration. In our opinion, the matter does not raise any question of law and entirely rests on findings of fact.

3. This application is, therefore, rejected. Rule is discharged with no order as to costs.